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No. 87-739

In the Supreme Court of the United States

OCTOBER TERM, 1987

BOAT NIAGARA FALLS, INC.,
PETITIONER,

v.

FRANCISCO JOIA and
JO-JA SERVICE CORP.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT FRANCISCO JOIA'S BRIEF IN OPPOSITION

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I

QUESTION PRESENTED

The jury at the District Court assessed fault in this seaman's personal injury action as follows:

The plaintiff	5%
The co-defendant vessel owner/employer	30%
The co-defendant joint tortfeasor	65%

The trial court entered judgment against the co-defendants by applying the principle of joint and several liability.

The question presented is:

Whether application of the principle of joint and several liability in an action decided under the Jones Act (46 U.S.C. § 688) and the General Maritime Law is in conflict with *United States* v. *Reliable Transfer Co.*, 421 U.S. 397 (1975) and whether it creates a conflict with decisions of the Fifth, Eighth and Eleventh Circuits.

II

LIST OF ALL PARTIES

All parties to this action appear in the caption of this Brief. There are no subsidiaries or affiliates.

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Opinions Below

The Memorandum and Order on Judgment of the United States District Court for the District of Massachusetts dated August 30, 1985, applying the principle of joint and several liability was not reported. The opinion can be found in the Appendix to the Petition for a Writ of Certiorari (A. 27a). The opinion of the United States Court of Appeals for the First Circuit is reported as *Joia* v. *Jo-Ja Service Corp.*, 817 F.2d 908 (1st Cir. 1987).

Statute Involved

The Jones Act, 46 U.S.C. § 688 provides,

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principle office is located.

Existence of Jurisdiction Below

The jurisdiction of the United States District Court for the District of Massachusetts over respondent Francisco Joia's tort claims was founded upon the Jones Act, 46 U.S.C. § 688 and 28 U.S.C. § 1333.

Statement of the Case

This is a seaman's action for personal injuries sustained by the plaintiff Francisco Joia (hereinafter "Joia") on August 1, 1983 while he was employed aboard the F/V NIAGARA FALLS, a vessel owned by co-defendant Boat Niagara Falls, Inc. (hereinafter "Niagara"). The vessel is an eighty-foot-long, steel hull stern dragger out of New Bedford, Massachusetts. On that date the vessel was docked in New Bedford, having returned from a fishing trip on July 31, 1983. At approximately 5:00 a.m. on August 1, 1983, the water boat CHIPPY pulled alongside the F/V NIAGARA FALLS to fill its fresh water tank pursuant to a service contract between Niagara and the owner

of the CHIPPY, Jo-Ja Service Corp. (hereinafter "Jo-Ja"). The operator of the CHIPPY mistakenly pumped 200 to 300 gallons of water into the hydraulic oil fill rather than the water tank fill. This caused the hydraulic oil tank to overflow and spill a mixture of hydraulic oil and water on the deck of the engine room of the F/V NIAGARA FALLS. At approximately 9:00 a.m. Joia arrived at the vessel to start its engines. As he descended the ladder to the engine room he saw the oil and water on deck. After leaving the vessel and calling its owners, Joia purchased a pump as directed by one of the owners and returned to the vessel to pump out some of the water. As he walked on the deck through the oil and water to set up the pump, he slipped and fell, sustaining severe personal injuries. Joia suffered a herniated disc, which was excised with a laminectomy, and a hydrocele in his right testicle, which was also surgically removed.

Joia commenced suit in the United States District Court for the District of Massachusetts. Joia brought two counts against his employer Niagara, one sounding in negligence under the Jones Act, 46 U.S.C. § 688, the other alleging unseaworthiness under the General Maritime Law. Joia also brought a pendent state law claim sounding in common law negligence against Jo-Ja. The two co-defendants filed cross claims alleging contractual indemnity. The case was tried to a jury, Mazzone, J., presiding. On May 14, 1985, the jury returned a verdict for Joia, awarding him $360,000.00, with prejudgment interest at the rate of 10 percent per annum. The jury found Niagara 30 percent negligent, Jo-Ja 65 percent negligent and Joia 5 percent contributorially negligent.

Both defendants filed motions for judgment notwithstanding the verdict, which were denied. The Court allowed Jo-Ja's motion for limitation of liability and limited its liability to $50,000.00, the value of the water boat. On September 16, 1985, the Court entered judgment for Joia in the amount of $342,000.00 plus interest at the rate of 10 percent per year on

$44,000.00 past wages; with interest of $9,338.75, the total verdict for Joia was $351,338.75. The Court had reduced the verdict of $360,000.00 to $342,000.00 because of Joia's 5 percent contributory negligence.

Applying the principle of joint and several liability, the Court entered judgment against Jo-Ja in the amount of $50,000.00, the limit of its liability, and against Niagara in the amount of $301,338.75. Niagara timely filed its Notice of Appeal on September 20, 1985.

On appeal, the United States Court of Appeals for the First Circuit on May 1, 1987, reversed the order limiting Jo-Ja's liability to $50,000.00. It affirmed the District Court's application of the principle of joint and several liability. It held that both defendants Niagara and Jo-Ja are jointly and severally liable to Joia in the amount of $342,000.00, with Joia bearing the loss of $18,000.00 for his own 5 percent contributory negligence.

On June 17, 1987, the United States Court of Appeals for the First Circuit denied Niagara's Petition for Rehearing and Suggestion of Rehearing en banc on the issue of the applicability of the principle of joint and several liability. On October 30, 1987, Niagara filed its petition for a writ of certiorari.

Reasons for Not Granting the Writ

This Court should not grant the writ of certiorari because the decision of the First Circuit Court of Appeals, upholding the District Court's application of the principle of joint and several liability in an action decided under the Jones Act (46 U.S.C. § 688) and the General Maritime Law, is not in conflict with *United States v. Reliable Transfer Company*, the decision is not in conflict with decisions of the Fifth, Eighth and Eleventh Circuits, and the issue presented is not in need of the Supreme Court's voice.

I. APPLICATION OF THE PRINCIPLE OF JOINT AND SEVERAL LIABILITY IN AN ACTION DECIDED UNDER THE JONES ACT (46 U.S.C. § 688) and the General Maritime Law Is Not in Conflict With *United States* v. *Reliable Transfer Company*, 421 U.S. 397 (1975).

In its opinion dated May 1, 1987, the First Circuit Court of Appeals held that co-defendants Boat Niagara Falls, Inc. and Jo-Ja Service Corp. are jointly and severally liable for the damages awarded to plaintiff Francisco Joia. Boat Niagara Falls, Inc. argues that this holding is in conflict with *United States* v. *Reliable Transfer Company*, 421 U.S. 397 (1975). This argument is without merit. The *Reliable Transfer* Court held only that "when two or more parties have contributed by their fault to cause *property* damage in a maritime *collision or stranding*, liability for such damage is to be allocated among the parties proportionately to the comparative degree of their fault..." 421 U.S. at 411. (Emphasis added). The holding is limited to property damage arising from a maritime collision or stranding. It is not applicable at all to damages arising from a maritime personal injury. Nowhere in its opinion did the Supreme Court state that the principle of joint and several liability should not be applied in such a case. In a more recent opinion the Court explained its ruling in *Reliable Transfer* by stating,

> *Reliable Transfer* merely changed the apportionment from equal division to division on the basis of relative fault. But we did not upset the rule that the plaintiff may recover from *one* of the colliding vessels the damage concurrently caused by the negligence of both.

Edmonds v. *Compagnie Generale Transatlantique*, 443 U.S. 256, 272 n.30 (1979). As so well stated by the Eighth Circuit Court of Appeals, "the decision in *Reliable Transfer* did not affect the general rule in admiralty that the plaintiff may recover the full amount of its damages from either of two joint

tortfeasors." *SCNO Barge Lines, Inc.* v. *Sun Transportation Co.*, 775 F.2d 221, 227 (8th Cir. 1985). In *Edmonds* the Supreme Court actually revitalized the principle of joint and several liability as it applies to maritime property damage cases. Despite this case law, your petitioner nevertheless cites two sentences in the *Reliable Transfer* opinion and asks to have them read as meaning that a proportionate fault rule exists in the maritime law for personal injury cases. A fair reading of these sentences reveals that they do not support such an interpretation.

The *Reliable Transfer* Court first stated in dicta that "a proportional fault rule would simply bring recovery for property damage in maritime collision cases into line with the rule of admiralty law long since established by Congress for personal injury cases. See the Jones Act, 46 U.S.C. §688." 421 U.S. at 409. The Court also stated that, "in our own admiralty law a rule of comparative negligence has long been applied with no untoward difficulties in personal injury actions." 421 U.S. at 407, citing *Pope and Talbot* v. *Hawn*, 346 U.S. 406 (1953). These sentences do not mean, as your petitioner argues, that the Jones Act had already established a rule that damages in a maritime personal injury case are to be divided proportionately among all liable tortfeasors, or that the principle of joint and several liability is not applicable in such personal injury cases.

The Jones Act does not address the issue of dividing damages between joint tortfeasors, either in its text or in the cases interpreting it. In these decisions, however, the Jones Act is applied to the issue of dividing damages between a negligent defendant and a plaintiff that is contributorially negligent. By its express language the Jones Act incorporates the rights and remedies provided to injured railway workers in the Federal Employers' Liability Act, 45 U.S.C. §51 *et seq.*, which provides in pertinent part that,

> The fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee.

45 U.S.C. § 53. The Jones Act thus established a rule of admiralty law for personal injury cases that a contributorially negligent plaintiff could not recover damages for any part of the losses occasioned by its own percentage degree of negligence. This is quite different from the rule in maritime property damage cases prior to the *Reliable Transfer* opinion.

Before *United States* v. *Reliable Transfer Company*, a contributorially negligent plaintiff in a maritime property damage case could recover 50 percent of its losses under the divided damages rule, even if the plaintiff itself were more than 50 percent negligent. Damages were divided equally among all liable parties. Under the Jones Act rule, however, a contributorially negligent plaintiff could recover only damages attributable to the negligence of the defendant. Therefore, a 95 percent negligent plaintiff could recover only 5 percent of its losses under the Jones Act, whereas under the divided damages rule, it would be able to recover 50 percent of the damages.

By adopting the rule developed under the Jones Act, the *Reliable Transfer* Court ended the disproportionate allocation of damages between defendants and contributorially negligent plaintiffs in maritime property damage cases. It thereby brought recovery for damages in such cases into line with the rule for dividing damages in maritime personal injury cases. It is submitted that *this* is what the Supreme Court meant when it stated in *Reliable Transfer* that a proportionate fault rule would bring recovery for property damage "into line with the rule of admiralty law long since established by Congress for personal injury cases." 421 U.S. at 409. The Supreme Court itself confirmed that this is what is meant when in *Edmonds* it described *Reliable Transfer* as deciding the "apportionment of damages between a plaintiff and defendant who concurrently

caused grounding..." *Edmonds* v. *Compagnie Generale Transatlantique*, 443 U.S. 256, 272 n.30 (1979). The rule earlier established by Congress was not a proportional fault rule for dividing damages between joint tortfeasors, as your petitioner suggests, but was a rule for dividing damages between a defendant and a contributorially negligent plaintiff.

Petitioner's argument that the Panel of the First Circuit Court of Appeals erroneously read *Reliable Transfer* is without merit. The opinion, providing for the proportionate allocation of damages between a negligent plaintiff and a negligent defendant, neither stated nor implied that the Jones Act had already established a rule for the proportionate assessment of damages in personal injury cases. As the Supreme Court has indicated, *Reliable Transfer* was not even intended to abrogate the principle of joint and several liability in property damage cases. In short, the decision of the First Circuit Court of Appeals in *Joia* upholding the principle of joint and several liability in a maritime personal injury case is not based upon an erroneous finding of, it does not run counter to the language of, and it does not conflict with *United States* v. *Reliable Transfer Company*.

Your petitioner also argues erroneously that the Panel of the First Circuit Court of Appeals erred in citing Massachusetts common law in support of its affirmance of the application of the doctrine of joint and several liability. The District Court originally heard this case pursuant to the Jones Act, its admiralty jurisdiction and its authority to hear pendent state law claims. There is no doubt that Joia's claim against Boat Niagara Falls, Inc. was within the scope of the Court's admiralty jurisdiction. However, the matter of assessing damages against Jo-Ja Service Corporation could be decided under Massachusetts law. It should be noted, however, that the District Court and Court of Appeals only made reference to Massachusetts law on this issue and did not rely solely upon it.

The Supreme Court has held that with respect to maritime torts, a state may modify or supplement the federal maritime

law when the state action is neither hostile to the characteristic features of the federal maritime law nor inconsistent with federal legislation. *Just* v. *Chambers, Executrix*, 312 U.S. 383, 388 (1941). Even though admiralty suits are generally governed by federal substantive and procedural law, courts applying maritime law may adopt state law by express or implied reference, or by virtue of the insterstitial nature of federal law. *Alcoa Steamship Company* v. *Charles Ferran and Company*, 383 F.2d 46 (5th Cir. 1967). State law may even supplement maritime law when federal law is silent on an issue. *Coastal Ironworks, Inc.* v. *Petty Ray Geophysical, a Division of Geosource, Inc.*, 783 F.2d 577 (5th Cir. 1986), for the General Maritime Law incorporates the general law of torts when it is not inconsistent with the law of admiralty. *Spinks* v. *Chevron Oil Company*, 507 F.2d 216, 222 n.8 (5th Cir. 1975).

Your respondent submits that federal maritime law requires the application of the principle of joint and several liability to maritime personal injury cases. To the extent that federal law is deemed to be not absolutely clear on this point, however, the First Circuit Panel was absolutely correct in relying upon Massachusetts law to support its affirmation of the application of joint and several liability. Massachusetts law is clear; concurrent tortfeasors are jointly and severally liable for a plaintiff's damages. *Feneff* v. *Boston & Maine R.R.*, 196 Mass. 575, 82 N.E. 705 (1907). Since state law in this instance is so clear and consistent with federal maritime law, the First Circuit Panel did not err in citing Massachusetts law in support of its decision.

Even if this Court were to hold that it was error to cite Massachusetts law, no prejudice could be deemed to have resulted against petitioner. The issue of choice of law is actually irrelevant on the question of the applicability of the principle of joint and several liability. The rule in maritime law is the same as in Massachusetts law; concurrent tortfeasors causing a single harm are jointly and severally liable for losses sustained by an injured plaintiff.

II. The Decision of the First Circuit Is Not in Conflict With Decisions of the Fifth, Eighth and Eleventh Circuits.

The First Circuit's opinion is not in conflict with the relevant decisions of the three circuits named by petitioner. The holding of *Leger* v. *Drilling Well Control, Inc.*, 592 F.2d 1246 (5th Cir. 1979) is not inconsistent with the First Circuit's opinion in *Joia*, for the issues decided in the two cases are highly distinguishable. In *Joia* the issue was whether either one of the two co-defendants could be required to pay the full amount of damages awarded to a plaintiff, even if this amount exceeded the selected defendant's percentage degree of fault. In *Leger* the issue was whether a non-settling defendant could reduce its damages after entry of judgment by taking a credit for amounts paid to the plaintiff by co-defendants who settled prior to trial. The Fifth Circuit rejected this argument, refusing to let the non-settling defendant take advantage of settlement monies paid by the other defendants prior to trial. The Court held that the non-settling defendant had to pay its portion of the damages awarded by the jury. 592 F.2d at 1251. The *Leger* Court did not reach the issue presented in *Joia*, as to whether a non-settling defendant can be required to pay all of the damages awarded to a plaintiff, even an amount greater than its proportionate share. Petitioner's statement at page 8 of its petition that *Leger* "held that a defendant should not pay more than its allocated share of liability" is not accurate; *Leger* actually held that a non-settling defendant could not pay *less* than its allocated share. For the *Leger* Court to have ruled otherwise would have been to discourage defendants from settling cases and encourage them to "roll the dice" and then try to mitigate their losses by relying on monies paid by defendants who took the risk of settling a case before a jury rendered a verdict. The Court relied on *Reliable Transfer* to support its holding. The Fifth Circuit did not, however, rule that joint and several liability is no longer the rule to be

applied in maritime personal injury cases. Even though *Leger* relies upon the rationale of *Reliable Transfer* while *Joia* rejects it, the holdings of the two cases are so distinguishable that they cannot rationally be deemed in conflict with each other. The same argument applies to two Eleventh Circuit cases.

In *Jonovich* v. *Desco Marine, Inc.*, 809 F.2d 1529 (11th Cir. 1987), the issue presented was whether a settling defendant in a maritime action was entitled to seek indemnity from non-settling defendants if, upon approportionment at trial, it is determined that a defendant's settlement was greater than its proportionate share of a judgment would have been had it not settled and proceeded to trial. The Court held that the settling defendant could not seek indemnity. 809 F.2d at 1532. The Court's rationale was similar to that of the *Leger* Court. The *Jonovich* Court relied upon *Reliable Transfer* to prevent a defendant from paying less than its share of damages. The Court did not decide the issue of whether a defendant can be required to pay more than its share of damages under the principle of joint and several liability.

Gormley v. *Van Ingen*, 736 F.2d 624 (11th Cir. 1983) resolved virtually the same issue as did *Leger*. The *Gormley* Court held that the non-settling defendants could not pay less than their share of the plaintiff's damages by taking a dollar for dollar credit from funds paid prior to trial by a defendant that had settled with plaintiff. The *Gormley* Court did not address the issue of the applicability of the principle of joint and several liability. As with the *Leger* opinion, the holdings in *Jonovich* and *Gormley* are so different from the *Joia* holdings that these cases of the Eleventh Circuit cannot be deemed in conflict with the *Joia* case of the First Circuit.

In a 1982 case, however, the Eleventh Circuit rendered an opinion which actually complements and is consistent with the First Circuit Panel's decision in *Joia*. In *Ebanks* v. *Great Lakes Dredge and Dock Company*, 688 F.2d 716 (11th Cir. 1982), *rehearing denied*, 693 F.2d 135, *cert. denied*, 460 U.S. 1083

(1983), the Court held that in a Jones Act negligence claim for personal injuries the trial court erred in giving the jury special questions to determine the degree of fault between the defendant and a non-party tortfeasor. Relying on *Edmonds* v. *Compagnie Generale Transatlantique*, 443 U.S. 256 (1979), the Court held that "the plaintiff is entitled to recover. . . against either of several tortfeasors without regard to the percentage of fault. . ." 688 F.2d at 722. The Eleventh Circuit has thus embraced the doctrine of joint and several liability in a maritime personal injury case, as the First Circuit has done in *Joia*.

The Court of Appeals for the Eighth Circuit also has rendered an opinion on the issue of joint and several liability which does not conflict, but is actually in accord with the *Joia* opinion. In *SCNO Barge Lines, Inc.* v. *Sun Transportation Company, Inc.*, 775 F.2d 221 (8th Cir. 1985), the Court held that even in this property damage case the plaintiff could recover the full amount of its damages, including prejudgment interest on 100 percent of its damages from either one of two joint tortfeasors. 775 F.2d at 227. This decision affirmed the applicability of the principle of joint and several liability, even in a maritime property damage case. Your petitioner erroneously argues that this Eighth Circuit decision is in conflict with *Joia*. Since the decision of the Fifth and Eleventh Circuits are also not in conflict with *Joia*, but in some instances in agreement with it, the petitioner's argument that there is a conflict among the circuits over the issue of the application of the principle of joint and several liability is without merit.

III. This Issue Is Not in Need of the Supreme Court's Voice.

The Supreme Court has already answered the question in the affirmative as to whether the principle of joint and several liability is applicable in a maritime personal injury case. On June 27, 1979, approximately ten weeks after *Leger* v. *Drilling*

Well Control, Inc. was decided, the Supreme Court rendered its decision in *Edmonds* v. *Compagnie Generale Transatlantique*, 443 U.S. 256 (1979). In that case the Court held that the co-defendant vessel owner was liable for all of the plaintiff's damages not due to the plaintiff's own contributory negligence. 443 U.S. at 271. The vessel owner was liable for all of the damages attributable both to its own negligence and the negligence of the other co-defendant, plaintiff's employer. Although the *Edmonds* case involved the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*, this fact alone does not detract from the opinion's control over the issue of joint and several liability in the *Joia* case. Repeatedly, the *Edmonds* Court restated the General Maritime Law on this subject. After holding that the vessel owner was liable for all of the plaintiff's damages and not just its own proportionate share, the Court stated that the general rule in maritime law allows an injured worker to sue a tortfeasor for the full amount of damages for an indivisible injury that the tortfeasor's negligence was a substantial factor in causing, even if the concurrent negligence of others contributed to the accident. 443 U.S. at 260. The Court then went on to demonstrate that this decision was in harmony with *Reliable Transfer*.

The Court explained that in *Reliable Transfer* it had not rejected the general rule of joint and several liability, but "merely changed the apportionment from equal division to division on the basis of relative fault. But we did not upset the rule that the plaintiff may recover from *one* of the colliding vessels the damage concurrently caused by the negligence of both." 443 U.S. at 272 n.30 (1979).

The Supreme Court has thus spoken clearly on this issue. The principle of joint and several liability is to be applied in maritime property damage cases and maritime personal injury cases. There is no need for the Court to address again this issue when it has spoken on it only eight years ago.

This issue also is not in need of the Supreme Court's voice because the future of joint and several liability, particularly in maritime cases, would better be resolved by the Congress. Indeed, at present there is a bill pending in the House of Representatives, H.R. 1841 as reported on October 22, 1987, which, if passed by the legislature, would drastically alter maritime law as it now exists for personal injury cases under the Jones Act. The changes which might be made in the maritime law, if reform legislation is passed, may well obviate the need for the principle of joint and several liability to even be applied in the future. It would be both premature and potentially wasteful for the Court to rule on this issue when the seaman's very right to recover damages from the tortfeasor may be eliminated or greatly diminished by proposed legislation.

The issue is not in need of the Supreme Court's voice additionally because the principle of joint and several liability is inherently just. When a party is injured as a result of a tortfeasor's negligence, this principle helps to assure that the injured party will be made whole, particularly where one of the several joint tortfeasors may be insolvent, or partially so. While one joint tortfeasor may initially have to bear a disproportionate share of the damages, the law provides it with remedies to recover any excess portion of the damages that it pays. In admiralty law, for instance, joint tortfeasors have a right of contribution based on comparative fault. See *Maritime Overseas Corp.* v. *Northeast Petroleum Industries*, 706 F.2d 349, 355 (1st Cir. 1983). The principle of joint and several liability serves to offer maximum protection to the seamen who come within the broad remedial purposes of the Jones Act, 46 U.S.C. 688 *et seq.*

Finally, the issue is not worthy of the Court's valuable time and resources. The issue simply is not one of national importance. The *Joia* decision below is unique because it involves injuries sustained by a seaman. The number of Jones Act sea-

men constitutes an extremely minute fraction of this country's population. The number of seamen who are injured represents an even smaller fraction. The number of seamen who are injured, whose cases are tried to juries, and who then must deal with the issue of collecting damages from more than one concurrent tortfeasor is an even smaller fraction, if such a group of individuals can even be identified. Any decision by the court on the principle of joint and several liability as it applies to Jones Act personal injury cases would have an effect on so few people in this country that the issue does not warrant the time of the Court, which most assuredly is having issues presented to it this term which would have dramatic effects on much greater segments of our population. In view of the unique nature of this case, the lack of conflict among the circuits over the issue presented, and the lack of conflict between this case and *United States* v. *Reliable Transfer Company*, review by this Court is not warranted.

Conclusion

The petition for a writ of certiorari should be denied.

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